United Nations CCPR/C/SR.3038

International Covenant on Civil and Political Rights

Distr.: General
14 March 2014

Original: English

Human Rights Committee
110th session

Summary record of the 3038th meeting
Held at the Palais Wilson, Geneva, on Monday, 10 March 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant

Second periodic report of Kyrgyzstan

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.5106, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.14-41519 (E) 120314 140314

1441519

Please recycle

The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Second periodic report of Kyrgyzstan (CCPR/C/KGZ/2; CCPR/C/KGZ/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Kyrgyzstan took places at the Committee table.*

2. **Ms. Mambetalieva** (Kyrgyzstan), introducing the second periodic report of Kyrgyzstan (CCPR/C/KGZ/2), said that the revolution in her country in 2010 and subsequent democratic elections had represented a period of hope for the people of Kyrgyzstan. The Constitution, adopted in a countrywide referendum in 2010, provided for the establishment of mechanisms for the promotion and protection of human rights and for political pluralism, which would ensure that a system of checks and balances was in place and guarantee that the authorities were accountable to the public.

3. The National Strategy for Sustainable Development for the period 2013–2017 had been adopted, a large proportion of it being devoted to human rights issues. An expert working group to ensure the implementation of the Strategy was currently conducting a broad range of activities to bring national legislation into line with international standards. The Strategy called for increased cooperation between the national authorities and civil society in setting and meeting strategic targets for development. In that regard, all Government ministries and departments had civil society monitoring groups, comprising human rights defenders and representatives of civil society and academia. Those groups provided a platform for dialogue between the State and civil society, exchanges of information on violations of human rights, and plans for joint activities and monitoring. Memorandums of understanding had been concluded between State authorities and non-governmental organizations (NGOs) on continuous and effective cooperation. Representatives of civil society also participated in various expert groups and committees and contributed to processes for the amendment of legislation, as well as being involved in the process for the appointment of judges.

4. A thorough reform of the legal system had been under way since 2010, led by the Council for Judicial Reform comprising members of the judiciary, executive and other State bodies, lawyers, and representatives of political parties and non-profit organizations. The Council, which was chaired by the President of the Republic, had drafted a targeted programme for the development of the judicial system for the period 2013–2017, setting out the mission of the legal system, establishing its main aims and tasks, and indicating how those could be achieved. Expert groups had been established to amend and update legislation on the administration of justice. An Internet site had been set up to enable public access to information on the work of the legal system, and measures were being taken to equip courtrooms with audiovisual technology for the broadcasting of trials.

5. Reforms of the prosecution service and bodies responsible for internal affairs were also being carried out. A council on the reform and development of the law enforcement system had been established, and in recent months new legislation had been enacted to amend the Code of Criminal Procedure. Recruitment of law enforcement officials took place through a system of open competition. A witness protection programme had been established for the period 2014–2016, and a code of conduct for security officers was at the drafting stage. A development strategy had been drafted to bring the prison system into line with international standards, improve the situation of prisoners and contribute to their integration, in particular through job creation. Tax reductions in the criminal procedure system had enabled funds to be redirected to improving prison conditions; new facilities had been built for prisoners serving life sentences.

6. With regard to the prevention and prohibition of torture, the Criminal Code had been amended in 2012 to include a definition of torture in line with that contained in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A national centre for the prevention of torture had been set up, it was an independent body headed by the Human Rights Coordinating Council. Representatives of the centre had unlimited access to prisons and were mandated to recommend improvements. The centre was in direct contact with the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A plan of action had been drafted following the visit in 2011 of the United Nations Special Rapporteur on Torture, which provided, inter alia, for the installation of video recording equipment in places of detention and in corridors and offices in police stations.

7. In April 2013, a presidential decree had been issued on the strengthening of national unity and inter-ethnic relations. An expert council on inter-ethnic and interfaith development had also been established, and provided a forum for dialogue. A substantial legal basis had been established to overcome gender-based discrimination; a national strategy had been developed to ensure gender equality by 2020. The main aims of the strategy included increasing women's economic opportunities, providing equal access to education, overcoming gender-based discrimination, broadening women's access to justice reaching gender parity in decision-making and increasing women's political participation.

8. On the issue of gender-based violence, an interdepartmental working group had been established to amend legislation on social and legal measures to ensure protection against domestic violence. Amendments had been made to the Criminal Code to increase penalties for cases of forced marriage. Measures were also being taken to improve the juvenile justice system.

9. Considerable importance was attached to strengthening the State party's democratic infrastructure. In that regard, more than 10,000 NGOs were currently operating in Kyrgyzstan, along with numerous human rights defenders and international agencies. The Government had received visits from many United Nations officials, including the High Commissioner for Human Rights, members of the Subcommittee on Prevention of Torture, the Special Rapporteur on Torture and other special procedures; considerable efforts were being made to implement their recommendations.

10. **Mr. Bouzid** asked whether the State party intended to establish a database of cases in which international law had been directly invoked in the courts. The current lack of information in that regard was not in line with the provisions of the Covenant. The Committee would appreciate further information on measures to implement the Committee's Views under the Optional Protocol, in particular the payment of compensation to victims. The fact that the Human Rights Coordination Council's decisions to provide compensation had not been implemented suggested that the Council did not have de facto legal power. He asked whether the Coordination Council had a mandate to consider individual complaints, or whether it only considered the recommendations made by the United Nations special procedures.

11. He asked what measures were being taken to bring the procedures for electing the Ombudsman into line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). While he welcomed the efforts that had been made in law to increase the involvement of civil society in decision-making at the national level, he would appreciate clarification of the measures being taken to ensure that law was implemented fully.

12. He asked for further information on antiterrorist commando operations, which had led to the deaths of nine individuals and numerous reports of the excessive use of force. He wished to know whether an investigation had been launched into that case and whether

those involved had been brought to justice. He asked what had been the legal basis for those operations, since clandestine counter-terrorism measures were not in line with international law.

13. **Ms. Seibert-Fohr** said that although article 16 of the State party's Constitution provided for non-discrimination, the Committee remained concerned that a more proactive approach was required to overcome discrimination by officials and in society. In that regard, antidiscrimination clauses should be incorporated into all statutes, including administrative law and private contracts. Equal access to health and social services should be guaranteed. She asked if it was indeed the case that legislation on public servants did not provide for the prohibition of discrimination in the appointment of public servants or for disciplinary measures to be taken against public officials who had behaved in a discriminatory manner. The Committee had received worrying information on discrimination in employment, housing, health care and education on grounds of ethnicity, religious beliefs, disability and HIV status. She asked what safeguards were in place to prevent discriminatory laws from entering into force. She wondered what steps had been taken to review the degree to which national legislation was in line with the guarantees of non-discrimination as set out in the Covenant.

14. She asked what specific measures were being taken to implement the Priority Action Plan on the implementation of the concept of strengthening the unity of the people and inter-ethnic relations in the Kyrgyz Republic, what resources were allocated for its implementation, what measures were being taken to promote tolerance and understanding among ethnic groups, and whether education and awareness-raising campaigns were being conducted to combat stereotypes. According to reports, relations between ethnic Uzbeks and Kyrgyz remained tense in the south of the country, Uzbeks were subjected to discrimination in employment and seizures of their property and businesses, and several schools and universities that had previously taught in the Uzbek language had switched to Kyrgyz or had closed altogether. She asked whether it was true that Uzbek children did not receive an education in their native language, and that national testing in high schools was administered only in Kyrgyz or Russian. She wished to know whether the benefits offered to ethnic Kyrgyz living abroad who wished to return to their fatherland were also available to former nationals of other ethnicities who wished to return.

15. She asked whether it was true that the 1998 legislation governing states of emergency had not been amended as the Committee had requested in its previous concluding observations, and that it did not expressly guarantee the rights defined as non-derogable under the Covenant. The Committee had heard reports that, during the June 2010 events, the state of emergency had not been announced in advance, and military personnel had fired their weapons at passers-by within 15 minutes after it had been declared. She asked what steps had been taken to inform the Secretary-General of the United Nations of the provisions of the Covenant from which Kyrgyzstan had derogated and of its reasons for doing so.

16. **Mr. Salvioli** asked whether sufficient financial resources would be allocated to implement the 2012–2014 national plan of action on gender equality, and whether a separate body responsible for gender equality across all ministries would be established within the executive. He wished to know whether the definition of gender as applied by the Government of Kyrgyzstan included the concepts of gender identity and sexual orientation, and he asked what measures the Government was taking to combat discrimination on the ground of sexual orientation. How had the Government responded to the statements of intolerance made by religious leaders against gays and lesbians? The information provided by the State party regarding the case of Mikhail Kudryashov differed from the information received from NGOs, according to which independent medical examinations had shown that Mr. Kudryashov had suffered torture and ill-treatment. He asked whether the State had

adopted an official protocol to simplify procedures for transgender persons to apply for identity papers that reflected their chosen gender identity, regardless of whether they had undergone sex reassignment surgery.

17. He wished to know whether the Government was taking measures to ensure that victims of bride-kidnapping were able to lodge complaints and take legal action against the perpetrators. Lastly, he asked what action the Government was taking to raise awareness among the general public about non-discrimination on the ground of sexual orientation and to ensure that persons who suffered such discrimination or acts of violence could lodge complaints without fear of reprisals.

18. **Mr. Vardzelashvili** asked the delegation to comment on the report of the Special Rapporteur on violence against women, its causes and consequences on her visit to Kyrgyzstan, according to which many cases of domestic violence went unreported and unpunished. He asked whether there were any internal monitoring mechanisms to ensure that reports of domestic violence were registered and dealt with properly, whether hospitals were required to report suspected cases to law enforcement officials, and whether the Government would consider establishing programmes to ensure victims' safety and provide them with legal aid as a way of encouraging more reporting of cases.

19. According to information from NGOs, the police viewed marital rape as an administrative offence, which carried a penalty of only a small fine. He requested information on the number of reported cases of marital rape and the number of convictions in such cases, and asked whether those statistics were accessible to the public. According to Amnesty International, many women in Osh and the surrounding region were denied the right to work or seek an education, and he asked whether such restrictions were criminalized in national law. He asked how effective the social protection centres were and how many cases they dealt with.

20. He asked whether any progress had been made towards establishing a specialized State institution for gender issues. He wished to know whether the planned amendments to national legislation would enable women victims of violence or trafficking to request compensation. Given that Osh was known to be a point of departure for victims of human trafficking, he asked whether the Government was taking any special preventive measures there. He asked whether it was true that the number of prosecutions and investigations of cases of human trafficking had declined from 2008 to 2011, and requested updated information on the number of prosecutions and investigations from 2011 to 2013.

21. He wished to know to what extent members of the Elders' courts were competent to deal with the matters submitted to them, given that they had no legal training, and asked what procedures were in place to enforce the decisions they handed down. He wished to know whether any measures were taken to ensure that the Elders' courts were not used as a means of oppressing women and asked what action was taken in cases where the moral standards and traditions upheld by the Elders' courts conflicted with national law.

22. In addition to the persons mentioned in question 13 of the list of issues, the Committee had been informed that Nurkamil Ismailov had also died in custody in July 2013, and that the investigation had found no wrongdoing on the part of the police officers who had detained him. He asked whether there had been any cases in which law enforcement officials had been held accountable for the deaths of detainees in their custody.

23. **Mr. Shany** asked what measures had been taken to implement the Committee's Views under the Optional Protocol, particularly in relation to the 2008 case of *Maksudov, Rakhimov et al. v. Kyrgyzstan* concerning the extradition of recognized refugees from Kyrgyzstan to Uzbekistan. He noted that the State had also attempted to extradite Khabibullo Sulaimanov to Uzbekistan in 2012, although that extradition order had ultimately been overturned by the courts. He asked whether the delegation had any

knowledge of the circumstances in which Shukhrat Musin had disappeared from Kyrgyzstan in February 2013 and reappeared in Uzbekistan several months later. And he wished to know what measures the Government was taking to ensure that persons who held refugee status and feared persecution were not extradited or otherwise returned to States where they would be in danger of being ill-treated.

The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.

24. **Ms. Mambetalieva** (Kyrgyzstan) said that a working group had been established to thoroughly review national legislation, including the Criminal Code and the Code of Criminal Procedure. Her Government was of the view that international instruments must be converted into national law before they could be referred to in court decisions. In any case, the working group would look into that issue as well as the possibility of setting up a database containing statistics on cases in which the Covenant was directly invoked.

25. Her Government did not question the legality of the Committee's Views, and it was prepared to review its mechanisms for implementation of the Committee's Views and recommendations, which would require amending national law. The responsibilities of the Human Rights Coordination Council, which had begun operations just four months earlier, included monitoring implementation of the Committee's Views and recommendations and coordinating the work of the various State agencies in that regard.

26. Contradictions had been revealed in the law establishing the Office of the Ombudsman, which had led to problems when electing the Ombudsman. Draft amendments to that law had been developed in consultation with international organizations and the general public, and had been submitted to parliament. The amended law, if adopted, would clarify the election procedure and would clearly establish the Ombudsman's independence.

27. **Mr. Mamyrov** (Kyrgyzstan) said that a special operations unit had been established under antiterrorism legislation and that the decision to liquidate a group of 11 terrorists had been taken after they had refused to lay down their arms. They had been identified as Chinese nationals who had illegally crossed the border into Kyrgyzstan in order to carry out terror attacks. In February 2014, the Ministry of Internal Affairs had set up a special unit to combat human trafficking. Between 2001 and 2013, 220 cases of human trafficking for the purposes of labour exploitation, prostitution and the sale of children had been reported.

28. The Code of Administrative Liability had been amended in 2013 with a view to toughening penalties for perpetrators of domestic violence. Some 550 centres for the prevention of domestic violence had been set up around the country. Each reported violation of the rights of women victims of domestic violence by law enforcement officials was carefully examined with a view to eliminating discrimination against women. Turning to the matter of legislative reform, he said that civil society organizations were consulted about the process and that some representatives of human rights organizations sat on the bodies responsible for amending legislation. The Human Rights Coordination Council was planning to launch a public forum in April 2014 to encourage open debate on human rights issues.

29. **Ms. Usmanova** (Kyrgyzstan) said that Mr. Kudryashov's allegations that he had been beaten by officers of the State financial police had been found to be unsubstantiated in a series of inquiries and court hearings, as detailed in the State party's written replies to the list of issues (CCPR/C/KGZ/Q/2/Add.1). Mr. Kudryashov had not contested his original conviction.

30. **Ms. Mambetalieva** (Kyrgyzstan) said that a bill was being drafted to include the notion of "discrimination" in the State party's legislation, which currently contained the more limited notion of the "violation of the right to equal treatment". Nevertheless, current laws effectively prohibited discrimination on the basis of gender or disability and for other

reasons. Kyrgyz was the official language of the State party but Russian was also used in that capacity. The other two main languages spoken in Kyrgyzstan were Uzbek and Tajik. The right of ethnic communities to maintain, study and develop their native languages was safeguarded by the Constitution. Schools were free to determine their vehicular language of education.

31. **Mr. Mamyrov** (Kyrgyzstan) said that inquiries into the circumstances of the death of Mr. Ismailov had been reopened and were ongoing.

32. **Ms. Usmanova** (Kyrgyzstan) said that criminal investigations into the rape of 10 Uzbek and 2 Kyrgyz women in the south of the country during the disturbances of 2010 had led to criminal charges being brought against 11 persons, 7 of whom had been convicted. The remaining four were known but had left the country. A request for the extradition of one of them, who was serving a prison sentence in the Russian Federation, was still being considered by the Office of the Procurator-General in that country. Turning to the extradition to Uzbekistan of Mr. Maksudov and noting that archives containing his case file had been destroyed in 2010, she said that, in the light of the Views issued by the Committee, the Kyrgyz authorities would have to attempt to piece together the missing correspondence between the Offices of the Procurator-General in Kyrgyzstan and Uzbekistan regarding his case. Under current procedures, the extradition process against a person was suspended while his or her application for refugee status was under consideration. Mr. Sulaimanov, an Uzbek national who had requested refugee status in Kyrgyzstan, had not been extradited to Uzbekistan because he had been charged with crimes in the State party.

33. **Ms. Mambetalieva** (Kyrgyzstan) said that the Ministry of Finance had approved funding for the 2012–2014 National Action Plan on Gender Equality. The gender issues section in the office of social development was well equipped to bring about gender equality in Kyrgyzstan. Issues relating to sexual orientation and transgender persons were new to Kyrgyz society and it would take time and effort to raise public awareness of them. To date, no requests for sex change operations had been reported in the State party.

34. **Mr. Mamyrov** (Kyrgyzstan) said that the police took seriously and investigated thoroughly reports of bride-kidnapping. The incidence of bride-kidnapping had fallen dramatically since the relevant laws had been amended.

35. **Mr. Iwasawa** said that he would like to know whether article 41, paragraph 2, of the Constitution was in fact applied in the State party.

36. **Mr. Flinterman** asked whether the Human Rights Coordination Council would monitor the implementation of concluding observations and communications issued by the treaty bodies. The lack of any indication that the Covenant had ever been invoked before the courts was regrettable. He asked what was being done to ensure that members of the judiciary and the legal profession were aware of the State party's human rights obligations, to encourage them to invoke the human rights treaties before the courts and to educate emerging generations of legal professionals on the State party's obligations under those treaties.

37. **Mr. Vardzelashvili** asked whether officers of the special human trafficking department had received targeted training and, if so, whether they had succeeded in identifying victims of human trafficking during routine checks. He also wished to know whether oversight mechanisms for adoption procedures had been put in place with a view to combating the sale of children.

38. **Mr. Salvioli** said that he had been shocked by the delegation's references to the "liquidation" of presumed terrorists by the law enforcement agencies, which denoted a cavalier approach to basic human rights by the authorities in the State party. He asked

whether the delegation could clarify the circumstances of the incident and assure the Committee that decisions to employ force in the repression of armed groups took into account the need for proportionate action. He would like to know why the number of bride-kidnapping cases brought to court was so low and whether the State party had acted to combat polygamy. It was understandable that changing social attitudes to the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in the State party might be a long-term matter, but the State had a duty to respond immediately to cases of discrimination and to protect the rights of individuals. Investigations of ill-treatment by public officials were notoriously slow in the State party and perhaps that had been equally true in the case of Mr. Kudryashov.

39. **The Chairperson**, speaking as a member of the Committee, asked whether any remedy was available to persons in the State party for violations of article 41, paragraph 2, of the Constitution. He also asked, in the light of the "liquidation" of 11 presumed terrorists, whether the law in Kyrgyzstan prohibited the use of force except when necessary and then only in proportion to a perceived and imminent threat to life. If so, the delegation should clarify the circumstances of the incident. If not, the State party might well be in violation of article 6 of the Covenant.

The meeting rose at 6 p.m.